



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing was convened in response to an application filed by the tenants seeking a monetary order for compensation for damage or loss.

Both parties appeared at the hearing and gave evidence under oath.

### Issue(s) to be Decided

Are the tenants entitled to the compensation claimed?

### Background and Evidence

The tenants were served with a 2 month Notice to End Tenancy effective December 31, 2009. The notice was issued by the landlord's property management company, S Realty Ltd., and its agents. In that notice the landlord stated that the landlord wished to end the tenancy because:

All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The tenants say the rental unit was never occupied by the purchasers or anyone else and that it was demolished. The tenants say they have attempted to find out who the purchasers were but they have been unsuccessful.

The landlord says they acted in accordance with the instructions of the purchasers. The landlord submitted a letter dated October 29, 2009 from the purchasers which states:

Re: Ending Tenancy @ \* Ave

We hereby request the Owners of the above address to provide the Tenants with Notice, according to the Tenancy Act. The buyers intend to occupy the subject property after completion.

*(reproduced as written)*

The letter is signed by CC and VY. The landlord also submits a Contract of Purchase and Sale Addendum showing that that the purchasers were CC and VY purchasing the property from WH and SK.

The tenants say they did not have this information until they received it in the landlord's evidence package filed in response to this Application. Up until this time the tenants say the landlord's agent has refused to provide them with any information about the purchasers.

The landlord says they were not the selling agents of the property and they have no further information about the purchasers or their whereabouts.

## **The Law**

### **Landlord's notice: landlord's use of property**

**49** (1) In this section:

"**close family member**" means, in relation to an individual,

(a) the individual's father, mother, spouse or child, or

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(b) the father, mother or child of that individual's spouse;

**"family corporation"** means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

**"landlord"** means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest, and

(b) for the purposes of subsection (4), a family corporation that

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest;

**"purchaser"**, for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

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(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

## **Tenant's compensation: section 49 notice**

**51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or

before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

## **Analysis**

The evidence shows the tenants were evicted based on a Notice to End Tenancy given for landlord's use. The landlord named in these proceedings is the former property manager employed by the former owner. The landlord has provided evidence he was instructed in writing, to give the tenants Notice and he acted upon those instructions.

The tenants say the purchasers have not used the property for the purpose stated. The tenants say the house on the property was demolished and they do not have any information about the purchasers. The landlord says they have no idea what the



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purchasers did with the property or any other information about the purchasers although they have submitted a Contract of Purchase and Sale Addendum showing the purchasers' names.

I find that the landlord named in this application acting appropriately and as instructed by the purchaser and cannot be held liable for this claim.

However, as the names of the purchasers have now been revealed to the tenants through these proceedings while I will dismiss the tenants' application against the landlord named herein I will grant them leave to reapply against the purchasers themselves.

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